In the High Court of Judicature at Madras

Dated:28.06.2006

Coram:

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.2 of 2006

S.Kader Mohideen .. Petitioner

vs.

1. The State of Tamil Nadu rep. By
   the Secretary to the Government
   Public (SC) Department
   Fort St. George,
   Chennai 600 009.

2. The Union of India rep. by
   the Secretary to the Government
   Ministry of Finance,
   Department of Revenue (COFEPOSA Unit)
   New Delhi.

3. The Superintendent of Central Prison
   Central Prison, Chennai 600 003. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr.B.Kumar, Sr.counsel
For Mr.S.Palanikumar

For respondents 1 and 3 : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

Mr.P.Kumaresan, ACGSC forR.2

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner by name S.Kader Mohideen, challenges the impugned order of detention dated 15.12.2005, detaining him under Section 3(1)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

2. Heard the learned senior counsel for the petitioner as well as learned Additional Public Prosecutor for respondents 1 and 3 and Mr.P.Kumaresan, learned Additional Central Government standing counsel for R.2.

3. Mr.B.Kumar, learned senior counsel appearing for the petitioner, after taking us through the grounds of detention and all other connected materials, mainly contended that the detenu knows to read and write only in Tamil and in view of several discrepancies in the documents supplied, he was confused while making an effective and meaningful representation against the detention order, and therefore, the impugned detention order is vitiated. In order to substantiate his contention, learned senior counsel has brought to our notice the English version of the reply dated 06.12.2005 of the Ministry of Finance, Department of Revenue, Directorate of Revenue Intelligence, Chennai 17 and the Tamil version of the same. In para 6 of the English version of the said reply it is stated,

> "In view of the foregoing and on the facts and circumstances as borne out by the records, your claim of innocence appears to be unsustainable. .. "

In Tamil, the said version has been translated as,

> "மேற்கண்டவை மற்றும் ஆவணங்கள் கொண்டுள்ள உண்மைகள் மற்றும் சூழ்நிலைகளின்படி, நிரபராதி என்பதான தங்களது கோரிக்கை ஏற்புடையதெனத் தோன்றுகிறது. .... "

4. It is true that if we read both versions of the said passage in para 6 of the reply alone, it would give a different meaning. However, as rightly pointed out by the learned Additional Public Prosecutor, if the entire reply is taken into consideration, there would not be any confusion as claimed by the detenu. We also verified the entire translated copy of the reply dated 06.12.2005 and after reading the same, we agree with the stand taken by the learned Additional Public Prosecutor and we are unable to accept the argument of the learned senior counsel for the petitioner. Further, the said reply is also not contrary to the statement of fact narrated in para (xi) of the grounds of detention; accordingly, we reject the said contention.

5. The learned senior counsel for the petitioner has also pointed out that in English version of the petition under Section 167 (1) of the Criminal Procedure Code filed for extension of remand, the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Revenue Intelligence Department has stated that the accused was produced on 19.11.2005 in connection with "seizure of mother boards and San Disks Compact Flashe of foreign origin …, " but in the translated Tamil copy, which is available at page 103 of the paper book, the same Officer has stated,

"அந்நிய நாட்டைச் சேர்ந்த வர்த்தக அளவில் கைக்கடிகார கள் மற்றும் பேட்டரிகள் கைப்பபற்றப் பட்டது ….. "

It is true that the seized articles are mother boards and san disks compact flashe. On the other hand, in the Tamil translated copy, the same is mentioned as watches and batteries. First of all, this is only a petition filed by the Revenue Intelligence Officer before the Additional Chief Metropolitan Magistrate, Egmore, Chennai 8, for extension of remand. Even if we accept that there is discrepancy in description of the seized articles, it cannot be claimed that because of the same, the detenu got confused and he was prevented from making effective representation.

6. The learned senior counsel has also pointed out that in the telegram addressed to the father of the detenu, which is available at page 66 of the paper book, at the bottom of the same, it is stated that arrest of the detenu was intimated to "husband Shri Kader Mohideen", it should be mentioned as father, and not husband. In the Tamil version, which is available at page 67, the said mistake has been rectified. Though the learned senior counsel for the petitioner has highlighted the above discrepancy, as rightly pointed out by the learned Additional Public Prosecutor, the same has not affected or prejudiced the detenu in any way.

7. In the case of A. Alangarasamy vs. State of Tamil Nadu reported in AIR 1987 SC 1725, the Hon'ble Supreme Court while considering similar discrepancies, viz., variation between Tamil and English versions, has observed that,

> "5. ….The alleged difference between the two versions is not consequential. The order of detention and grounds accompanied clearly spelt out why the detenu was being detained. We are not persuaded to hold that the two versions are so different as to cause any prejudice to the detenu. … "

8. It is also useful to refer the Division Bench decision of this Court dated 05.08.2003 made in HCP.No.2330 of 2002 (Sudaha vs. State of Tamil Nadu). In that case, after noticing similar discrepancies in Tamil and English versions of certain document sent along with the grounds of detention, the Division Bench has observed that,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> "5. It is not every minor error in the order that would justify the inference of non application of mind. Venial mistakes and trivial errors, typographical and clerical mistakes which do not impinge on the substance of the matter as also the minor translation errors which do not affect the substance cannot be regarded as constituting sufficient basis to support an inference of non application of mind on the part of the detaining authority to the material which he was required to consider before forming his subjective satisfaction regarding the need for detention. "

9. Though learned senior counsel for the petitioner has relied on the case of Faritha vs. Union of India reported in 2005 M.L.J. (Crl.) 388, an unreported decision of this Court dated 12.08.2004 in HCP.No.351 of 2004 (S. Seematti vs. State of Tamil Nadu and others), on going through the factual details, particularly the discrepancies in the translation, we are satisfied that both the decisions are not applicable to the case on hand. On the other hand, the judgments of the Supreme Court (AIR 1987 SC 1725 and the Division Bench of this Court dated 05.08.2003 (HCP.No.2330 of 2002), are directly on the point.

10. It is also brought to our notice that when the error or discrepancy in the translation was brought to the notice of the authority, immediately, by way of reply it was informed to the detenu that it is an inadvertent error and it does not in any way prejudice the detenu in making representation. Further, the Additional Secretary to Government, Public Law and Order Department, Chennai-9 in his counter affidavit has also explained that the errors pointed out are not intentional, but inadvertently occurred in the Tamil translation. The officer has also explained that those details have been correctly and properly explained to the detenu in Tamil, and he also acknowledged the same by putting his signature. In those circumstances, we are of the view that the mistakes in Tamil translation as pointed out by the learned senior counsel for the petitioner are not viable and in no way prejudiced the detenu in making representation and on the ground of defective translation, the detention order cannot be faulted with and accordingly, we reject the contention of the learned senior counsel.

11. Equally, it cannot be claimed that there is non-application of mind on the part of the detaining authority. Further, it is not in dispute that in both the telegrams, the name of the detenu has been clearly mentioned. We are satisfied that in view of the fact that all those details were properly explained to the detenu at the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

time of service and of the fact that the same are venial mistakes or trivial errors, the same would not affect the detention order passed by the detaining authority.

Under these circumstances, we do not find any valid ground for interference; hence, this petition is dismissed.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Government
   State of Tamil Nadu
   Public (SC) Department
   Fort St. George,
   Chennai 600 009.

2. The Secretary to the Government
   Union of India
   Ministry of Finance,
   Department of Revenue (COFEPOSA Unit)
   New Delhi.

3. The Superintendent of Central Prison
   Central Prison, Chennai 600 003.

4. The Public Prosecutor
   High Court, Madras-104.

+ one cc to M/S.P.Kumaresan, Advocate Sr.No.27679.

PLI (CO)
RSM/30.6.2006

H.C.P.No.2 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/